

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS SHANNA GARNER	DEFENDANTS COMENITY BANK
(b) County of Residence of First Listed Plaintiff <u>BUCKS</u> (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
(c) Attorneys (Firm Name, Address, and Telephone Number) CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C. 30 EAST BUTLER PIKE, AMBLER, PA 19002 PHONE: (215) 540-8888 EXT. 116	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">Citizen of This State</th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th style="text-align: left;">Incorporated or Principal Place of Business In This State</th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> <tr> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business In This State	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)									
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V. ORIGIN (Place an "X" in One Box Only)					
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. § 227 et seq. Brief description of cause: TELEPHONE CONSUMER PROTECTION ACT
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ _____	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY (See instructions):	JUDGE _____	DOCKET NUMBER _____
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DATE 07/23/2015	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY				
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

SHANNA GARNER
v.
COMENITY BANK

CIVIL ACTION

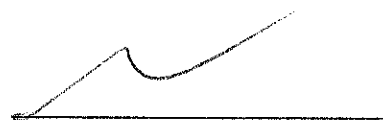
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

07-23-15
Date


Attorney-at-law

Plaintiff, Shanna Garner
Attorney for

215-540-8888 x 116

877-788-2864

kimmel@creditlaw.com

Telephone

FAX Number

E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 27 Viking Lane, Levittown, PA 19054

Address of Defendant: One Righter Parkway, Suite 100, Wilmington, DE 19803

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities? Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 47 U.S.C. § 227 et seq.

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, CRAIG THOR KIMMEL, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 07-23-15

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 07-23-15

Attorney-at-Law

57100

Attorney I.D.#

COMPLAINT AND DEMAND FOR JURY TRIAL

1 14. When contacting Plaintiff on her cellular telephone, Defendant used
2 an automatic telephone dialing system and automatic and/or pre-recorded
3 messages.

4 15. Defendant's automated messages identified its company name as the
5 caller.
6

7 16. Defendant's telephone calls were not made for "emergency
8 purposes."
9

10 17. On several occasions, when Plaintiff answered, she would be met
11 with silence, and then after saying "hello," she would be transferred to a live
12 representative.

13 18. In September 2014, Plaintiff spoke with Defendant and told them to
14 stop calling her.
15

16 19. Defendant heard Plaintiff's instructions to stop calling her cellular
17 telephone.
18

19 20. Defendant, however, ignored Plaintiff's instructions to stop calling
20 and revocation of any prior consent; rather, Defendant continued to call Plaintiff on
21 her cellular telephone without her express prior permission.

22 21. For example, Defendant called Plaintiff on September 30, 2014, at
23 6:16 p.m. and 7:15 p.m.; October 1, 2014, at 4:20 p.m., 7:18 p.m., and 8:19 p.m.;
24 October 3, 2014, at 6:14 p.m. and 7:12 p.m.; and October 6, 2014, at 7:21 p.m.
25

1 22. As a result, Plaintiff was forced to block the above referenced number
2 in order to avoid future calls from Defendant.

3 **DEFENDANT VIOLATED THE**
4 **TELEPHONE CONSUMER PROTECTION ACT**

5 23. Plaintiff incorporates the forgoing paragraphs as though the same were
6 set forth at length herein.

7 24. Defendant initiated multiple automated telephone calls to Plaintiff's
8 cellular telephone using a prerecorded voice and without her express prior consent.

9 25. Defendant initiated these automated calls to Plaintiff using an
10 automatic telephone dialing system.

11 26. Defendant's calls to Plaintiff were not made for emergency purposes.

12 27. Defendant's calls to Plaintiff, in and after September 2014, were not
13 made with Plaintiff's prior express consent.

14 28. Defendant's acts as described above were done with malicious,
15 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
16 under the law and with the purpose of harassing Plaintiff.

17 29. The acts and/or omissions of Defendant were done unfairly,
18 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
19 lawful right, legal defense, legal justification or legal excuse.

1 30. As a result of the above violations of the TCPA, Plaintiff has suffered
2 the losses and damages as set forth above entitling Plaintiff to an award of
3 statutory, actual and trebles damages.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, SHANNA GARNER, respectfully prays for a
6 judgment as follows:
7

- 8 a. All actual damages suffered pursuant to 47 U.S.C. §
9 227(b)(3)(A);
10 b. Statutory damages of \$500.00 per violative telephone call
11 pursuant to 47 U.S.C. § 227(b)(3)(B);
12 c. Treble damages of \$1,500.00 per violative telephone call
13 pursuant to 47 U.S.C. §227(b)(3);
14 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
15 e. Any other relief deemed appropriate by this Honorable Court.
16
17
18

19 **DEMAND FOR JURY TRIAL**

20 PLEASE TAKE NOTICE that Plaintiff, SHANNA GARNER, demands a
21 jury trial in this case.
22
23
24
25

1 RESPECTFULLY SUBMITTED,

2 DATED: 07-23-15

KIMMEL & SILVERMAN, P.C.

3
4 By: 
5 CRAIG THOR KIMMEL
6 Attorney ID # 57100
7 Kimmel & Silverman, P.C.
8 30 E. Butler Pike
9 Ambler, PA 19002
10 Phone: (215) 540-8888
11 Fax: (877) 788-2864
12 Email: kimmel@creditlaw.com
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